

July 25, 2001

D.T.E. 01-19-01

Complaint filed by Shi Yang, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy claiming YesTel, Inc. switched his long distance telephone service from AT&T to YesTel, Inc. without authorization.

APPEARANCES: Shi Yang
700 Huron Avenue, #20C
Cambridge, Massachusetts 02138-4561
Complainant

I. INTRODUCTION

On May 11, 2001, Shi Yang (“Complainant”), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy (“Department”) alleging that YesTel, Inc. (“YesTel” or “Company”) had switched his long distance telecommunications service from AT&T without authorization.¹

On June 21, 2001, pursuant to notice duly issued, the Department conducted an evidentiary hearing. At the hearing, the Complainant testified on his own behalf. The Company failed to appear at the evidentiary hearing.

II. POSITION OF THE COMPLAINANT

The Complainant stated that on December 6, 2000 YesTel switched his long distance carrier from AT&T without his authorization (Consumer Exh. 2A; Tr. at 10-11). The Complainant stated that he learned of the switch of his long distance service to YesTel upon receipt of his January 2001 Verizon telephone bill (Consumer Exh. 3A). The Complainant contends that he paid to YesTel \$48.81 and that, pursuant to federal slamming liability regulations, he requests that the Department allow him to collect \$73.22 from the Company (Consumer Exhs. I, 3A and 3B; Tr. at 12).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer’s primary interexchange carrier (“IXC”) shall be considered to have been authorized only if the IXC or local exchange carrier (“LEC”) that initiated that change provides confirmation that the customer did authorize

¹ Such practices are commonly referred to as “slamming”.

such change either through a signed Letter of Authorization (“LOA”) or oral confirmation of authorization through Third Party Verification (“TPV”) obtained by a company registered with the Department to provide TPV services in the Commonwealth.

G.L. c. 93, § 109(b) provides that for an LOA to be valid, among other things, it (1) must contain the signature and billing address of someone authorized to change the telephone provider, (2) shall not be combined with inducements of any kind on the same document, and (3) shall be printed in 12 point type and contain clear and unambiguous language that confirms the customer’s decision to change the primary IXC. G.L. c. 93, § 109(c) provides that for a TPV to be valid, it must: (1) identify the person that received the telemarketing call; (2) delineate the authority of that person to approve a change in the IXC or LEC for a particular telephone line; and (3) identify the new IXC or LEC. Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts’ slamming law set forth above, the Federal Communications Commission (“FCC”) implemented new slamming liability rules. In accordance with those rules the company that switches a customer’s telephone service without authorization must pay the customer’s authorized company a penalty equal to 150 percent of the charges received from the customer. The authorized company is then required to pay 50 percent of that amount to the customer. See 47 C.F.R. § 64.1140. In accordance with the FCC Corrected Version First Order on Reconsideration, CC Docket No. 94-129

(May 3, 2000), the FCC concluded that states should have primary responsibility for administering its slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) a hearing was conducted to determine whether the change in the Complainant's long distance carrier was authorized. The Department finds that, as YesTel failed to produce either an LOA or a TPV as required by G.L. c. 93, § 109(a), the Company switched the Complainant's long distance service from AT&T without authorization.²

Having found that YesTel initiated this illegal switch in Mr. Yang's long distance service, pursuant to 47 C.F.R. § 64.1140, the Department directs YesTel to pay AT&T, the customer's authorized long distance company, 150 percent of the charges it received from the Complainant (i.e., \$73.22) within 10 days from the date of this Order. AT&T shall remit to the Complainant 50 percent of that amount (i.e., \$36.61). The Department further directs

² An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b). Also, pursuant to G.L. c. 93, § 112(b) an IXC or LEC determined by the Department to have switched any customer's IXC or LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 for any subsequent offense. Since this is a first offense, the Department determines that no penalty under G.L. c. 93, § 112(b) shall be imposed.

YesTel to credit or refund to the Complainant all fees, interest and other charges imposed upon the Complainant.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination that YesTel, Inc. switched Shi Yang's long distance telephone service provider without authorization in violation of the provisions of Massachusetts G.L. c. 93, § 109 (a), it is hereby

ORDERED: That YesTel, Inc. shall comply with the directives contained in this order; and it is

FURTHER ORDERED: That YesTel, Inc. shall submit to the Department within ten (10) business days of the issuance of this order, an accounting of refunds and credits made to both Shi Yang and AT&T.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).